

USDOL/OALJ Reporter

[*Stites v. Houston Lighting & Power*](#), 89-ERA-1 (Sec'y May 31, 1990)

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U.S. DEPARTMENT OF LABOR

SECRETARY OF LABOR
WASHINGTON, D.C.

DATE: May 31, 1990
CASE NO. 89-ERA-1

IN THE MATTER OF

JIM STITES,
COMPLAINANT,

v.

HOUSTON LIGHTING & POWER,
RESPONDENT.

CASE NO. 89-ERA-41

IN THE MATTER OF

DORIS I. TEAGUE,
COMPLAINANT,

v.

HOUSTON LIGHTING & POWER COMPANY,
RESPONDENT.

BEFORE: THE SECRETARY OF LABOR

FINAL ORDER APPROVING SETTLEMENT
AND DISMISSING CASE

The above-captioned consolidated cases arise under the employee protection provision of the Energy Reorganization Act of 1974, as amended (ERA), 42 U.S.C. § 5851 (1982), and are before me for review of a Settlement Agreement entered into by the parties and purporting to settle in one document both of the captioned complaints by the

Complainants, husband and wife. In each case the administrative law judge (ALJ) issued a recommended order of dismissal based upon settlement of the respective complaint.

On March 16, 1990, upon review of the Settlement Agreement,

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I issued an order to show cause. As I explained in that order:

Paragraph 6 of the Settlement Agreement broadly prohibits Complainant from "disclos[ing] any of the facts underlying the Complaints or any claims that were raised or that could have been raised in the Complaints." Paragraph 6 also prohibits Complainants from "disclos[ing] this settlement or the contents or terms of this Settlement Agreement and related documents to any third party or parties, except for disclosure of this Agreement and related documents to the Court, to the extent necessary to obtain the Court's approval of this Agreement and dismissal of the Complaints." (Emphasis added) [Footnote omitted].

Paragraph 6, as such, would appear to restrict Complainants from providing information or documents obtained in the course of this case to the Nuclear Regulatory Commission (NRC) or any other agency.

* * * *

Paragraph 6 of the Settlement Agreement accordingly may restrict access by the Department of Labor, as well as other agencies, to information Complainants may be able to provide relevant to the administration and enforcement of the ERA and many other laws. So construed, its effect would be to "dry up" channels of communication which are essential for government agencies to carry out their responsibilities. *See Polizzi v. Gibbs & Hill Inc.*, Case No. 87-ERA-38, Sec. Order, July 18, 1989, slip op. at 3-6.

* * * *

For the reasons set forth in *Polizzi*, slip op. at 5-7, I hold that Paragraph 6 of the Settlement Agreement is void to the extent that it would prohibit Complainants from communicating to federal or state enforcement authorities as identified above.

Slip op. at 3-5. Because it was not clear on the record whether Respondent intended to agree to the remainder of the settlement if the provisions of Paragraph 6 I found to be void were severed, Respondent was given an opportunity to show cause why the

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remainder of the agreement should not be approved and the case dismissed.

I further stated in the March 16, 1990, order that:

Paragraph 7 provides in part that the parties agree "that any civil action or other litigation arising out of or resulting from a breach or violation or alleged breach or violation of this [Settlement] Agreement, shall be controlled by the laws of the State of Texas." I note that the Secretary has the discretionary authority to bring an action in United states [sic] district court to enforce an order issued pursuant to the ERA whenever a person has failed to comply with such order. *See* 42 U.S.C. § 5851(d). In such an action, moreover, the district court has jurisdiction to grant all appropriate relief, including, but not limited to, injunctive relief, and compensatory and exemplary damages. *Id.* I interpret Paragraph 7 as not restricting in any way the authority of the Secretary to bring an enforcement action under 42 U.S.C. § 5851(d), nor as limiting in such action the jurisdiction of the district court to grant all appropriate relief as identified in the statute.

Slip op. at 7-8. Complainants and the Respondent were given an opportunity to show cause why Paragraph 7 should not be approved as interpreted in my order.

The 30-day time period for submitting responses to the show cause order has expired and no submissions have been received.

Wherefore, Paragraph 6 of the Settlement Agreement is severed to the extent that it would restrict Complainants from communicating to federal or state enforcement authorities as described above. Paragraph 7 is interpreted as not restricting the authority of the Secretary or the jurisdiction of the district court under 42 U.S.C. § 5851(d) as identified above. In all other respects I find the settlement to be fair, adequate and reasonable and it is approved. These consolidated cases are DISMISSED with prejudice. *See* Stipulation of Dismissal.

SO ORDERED.

Elizabeth Dole
Secretary of Labor

Washington, D.C.